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TULARE COUNTY SUPERIOR COURTS
STATE OF CALIFORNIA, VISALIA DIVISION

In Re SEARCH WARRANT #013487

CASE NO: _____

YORAI BENZEEVI,

Moving Party,

V.

**SUPERIOR COURT OF THE COUNTY OF
TULARE,**

Respondent,

TULARE COUNTY DISTRICT ATTORNEY,..

Real Part in Interest.

**REAL PARTY IN INTEREST'S
RESPONSE TO NOTICE OF MOTION
AND MOTION OF DR. YORAI
BENZEEVI FOR RETURN OF SEIZED
PROPERTY AND RELATED
EVIDENTIARY HEARING; REQUEST
TO CONTINUE TO SET DATES FOR
EVIDENTIARY HEARING**

Date: October 5, 2018

Time: 2:00 pm

Dept: 13

Respondent, the People of the State of California, by and through their attorneys, TIM WARD, District Attorney, and TREVOR HOLLY, Deputy District Attorney, submit this REAL PARTY IN INTEREST'S RESPONSE TO NOTICE OF MOTION AND MOTION OF DR. YORAI BENZEEVI FOR RETURN OF SEIZED PROPERTY AND RELATED EVIDENTIARY HEARING; REQUEST TO CONTINUE TO SET DATES FOR EVIDENTIARY HEARING related to search warrant #013487. This motion is based upon the pleadings, points and authorities, evidence, and argument presented at the hearing of the matter.

**REAL PARTY IN INTEREST'S RESPONSE TO MOVING PARTY'S NOTICED MOTION FOR
RETURN OF SEIZED PROPERTY**

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2 **PROCEDURAL HISTORY¹**

3

4 This matter is presently set for a brief hearing on October 5, 2018, to receive this
5 Court's ruling regarding unsealing affidavits. There is nothing in the record that indicates this
6 date is set for an evidentiary hearing as requested by the moving party. It appears the moving
7 party is requesting the Court hold a *sua sponte* non-statutory evidentiary on this date.

8 The People were served with this Notice of Motion and Motion on or about September
9 20, 2018 at approximately 4:00 pm. At that time, Deputy District Attorney Holly was
10 preparing for trial and was unable to fully review the movant's papers at that time. DDA
11 Holly is the only attorney assigned to this matter. At the August 28, 2018 hearing, he
12 indicated that he would be in trial during the week of October 5, 2018, but that he would be
13 able to recess from trial to receive this Court's ruling on the unsealing of the affidavits.

14 Upon review of the instant motion, it appears that the moving party is requesting this
15 Court simply accept their version of the facts as set forth and release the funds at issue on
16 October 5, 2018. An evidentiary hearing is not possible on October 5, 2018 without
17 prejudicing the People's ability to present their case. The People estimate that they may call
18 over 20 witnesses on their behalf. It is unrealistic to serve all witnesses upon such short
19 notice.

20 Additionally it is unknown how many witnesses the movant may call. To request a full
21 evidentiary hearing on October 5, 2018, is at the least impractical, and at the most prejudicial
22 to the People. The People are not opposed to such a hearing, only the short notice Movant has
23 unreasonably presented. The People request that the hearing on October 5, 2018, be limited to
24 the receipt of the Court's ruling on the unsealing of the affidavits.

25 **STATEMENT OF FACTS**

26

27 As noted in the footnote on page two (2), the Statement of Facts has been omitted in
28 this Response. California Code of Civil Procedure §1003 requires that all moving and
supporting papers be served 16 *court* days before the hearing (for personal service). The

¹ As the Court is well versed in the history of this matter, and out of respect for Judicial economy, the Statement of Facts has been omitted.

1 People were served on September 20, 2018. 16 court days from the October 5, 2018 hearing is
2 September 13, 2018. Given the shortened amount of time due to the untimely service, the
3 People request that their response to the Movant's statement of facts, the People's statement
4 of facts, and further points and authorities regarding Dr. Benzeevi's thefts and
5 misappropriations will take additional time. As such, the People will be filling their statement
6 of facts and points and additional points and authorities as a supplement to this motion on
7 October 2, 2018.

8 **ARGUMENT AND AUTHORITY**

9 **THE PEOPLE REQUEST A FULL EVIDENTIARY HEARING**

10 Statutory law and case law clearly establish that stolen or embezzled property should
11 be seized and returned to its rightful owner (PC § 1407, PC § 1408, and PC § 1409). "Clearly,
12 the People have the right to detain any property which it is unlawful to possess.." (*People v.*
13 *Superior Court (McGraw)* (1979) 100 Cal. App. 3d 154). However, a subject who has had
14 property seized does have a due process right to an evidentiary hearing. (*Ensoniq Corp. v.*
15 *Superior Court* (1998) 65 Cal. App. 4th 1537, 1549). Both *Ensoniq* & *McGraw* involved
16 criminal cases that had concluded, whereas this case is being actively investigated. However,
17 while the People do anticipate filling charges regarding the Celtic transactions, we do not
18 anticipate doing so in the near term. Given the length of time from now until charges are
19 likely to be filed, we believe that an evidentiary hearing to determine the ownership of the
20 funds is appropriate. The hearing should be designated a "special proceeding" as no criminal
21 action has yet been filed. (*Ensoniq Corp. v. Superior Court*, (1998) 64 Cal. App. 4th, 1537,
22 1547).

23 There is little guidance as what the procedures for such a hearing are, a sentiment
24 echoed by the Court in *Ensoniq*; "However, as the court noted in McGraw, section 1411 is
25 silent as to the appropriate procedure to follow in making the initial determination as to
26 whether property seized under a search warrant is in fact stolen, when there is no conviction
27 of theft and no criminal charge pending. (Id. at p. 159, 160 Cal.Rptr. 663.) Sections 1408–
28 1410 are likewise silent as to how the property is to be deemed stolen or embezzled absent a

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MOTION FOR RETURN OF SEIZED PROPERTY

1
2 charge or conviction." (*Ensoniq Corp. v. Superior Court*, (1998) 64 Cal. App. 4th, 1537,
3 1539).

4 It is clear that it must be an evidentiary hearing (*People v. Superior Court (McGraw*)
5 (1979) 100 Cal. App. 3d 154,160, *Ensoniq Corp. v. Superior Court*, (1998) 64 Cal. App. 4th,
6 1537, 1539). A hearing is a proceeding of relative formality with definite issues of fact or law
7 to be tried, in which witnesses are heard and evidence is presented. (Black's Law Dictionary,
8 6th Ed). "A hearing is generally understood to be a proceeding where evidence is taken to the
9 end of determining an issue of fact and a decision made on the basis of that evidence. (*People*
10 *v. Ivenditti* (1969) Cal. App. 2d 178, 180). Therefore, the People are requesting a full hearing,
11 with the opportunity to call sufficient witnesses and present competent evidence that the funds
12 at issue were unlawfully possessed by Dr. Benzeevi.

13 I. THE MOVANT'S HAVE NOT SUBMITTED ACTUAL EVIDENCE SUFFICIENT TO
14 BASE A RULING UPON.

15 As part of their motion, movants have submitted several declarations, newspaper
16 articles, and other exhibits to their motions. The People appreciate the courtesy, and are
17 always happy to receive additional evidence. However, the majority of the exhibits are not
18 admissible under the rules of evidence. The newspaper articles regarding Cerner are
19 inadmissible hearsay. The evidence by their hired accountant is expert testimony. To be
20 admissible, he must actually testify, state the evidence, statements, and documents he
21 reviewed, as well as his methodology and basis for his opinion. A mere report is not
22 admissible. The declarations are likewise inadmissible as hearsay absent a stipulation or
23 special ruling from the Court. Therefore, at this time, no actual evidence has been presented
24 to the Court.

25 The Court may wish adopt specific rules and procedures for the hearing, as it is ill
26 defined by the current law. However, at the moment, insufficient time has been granted to
27 decide exactly how the proceeding should proceed and what the rules for the proceeding
28 should be. This is a motion brought by the movant, so if the Court intends to proceed it
should require that the movant present their evidence in open court first and then provide an

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MOTION FOR RETURN OF SEIZED PROPERTY

opportunity for The People to put their case on.

CONCLUSION

The People request to have a full evidentiary hearing and are confident that there is sufficient evidence to establish that the funds seized from Dr. Benzeevi's Bank account were unlawfully obtained by him and that they are the proceeds of theft and fraud. However, the People have a right to a full evidentiary hearing on the matter, with the opportunity to present witnesses and evidence. This will not be possible on the date requested by the movant. Therefore, we respectfully request the Court set a date, or series of dates, providing sufficient time for the matter to be heard.

Dated: September 28, 2018

Respectfully submitted,

**TIM WARD
DISTRICT ATTORNEY**

**TREVOR HOLLY
DEPUTY DISTRICT ATTORNEY**

**REAL PARTY IN INTEREST'S RESPONSE TO MOVING PARTY'S NOTICED
MOTION FOR RETURN OF SEIZED PROPERTY**